(5) No. 98-527

FILED

NOV 6 - 1998

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

October Term, 1998

DANIEL CASEY, SGT., Deceased, etc., *et al.*,

Petitioners,

-v.-

DONOVAN BLISSETT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONERS

DENNIS C. VACCO
Attorney General of the State of New York
Attorney for Petitioners
The Capitol
Albany, NY 12224
(518) 474-8352

Dated: November 4, 1998

BARBARA G. BILLET
Solicitor General and
Counsel of Record

PETER H. SCHIFF
Deputy Solicitor General

MARTIN A. HOTVET
Assistant Attorney General

Of Counsel

THE REPORTER COMPANY, *Printers and Publishers, Inc.*
181 Delaware Street, Walton, NY 13856—800-252-7181
(4872 – 1998)
Printed on Recycled Paper

6 PP

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

SUPPLEMENTAL BRIEF 1

TABLE OF AUTHORITIES

Cases **Page**

Alexander S. v Boyd, 113 F3d 1373, 1386 (4th Cir 1997), *cert denied*, 118 S Ct 880 (1998) 2

Hadix v Johnson, 143 F3d 246 (6thCir 1998), *pet for cert pending* (No. 98-262) 2

Inmates of D.C. Jail v Jackson, ___ F3d ___, 1998 WL 754391 (DC Cir Oct 30, 1998 1

Williams v Brimeyer, 122 F3d 1093 [8th Cir 1997] 2

No. 98-527

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1998

DANIEL CASEY, SGT., Deceased, etc., *et al.*,

Petitioners,

-v-

DONOVAN BLISSETT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF

The petitioners in the above-entitled case file this supplemental brief to advise the Court of a new decision pertinent to the petition.

In *Inmates of D.C. Jail v Jackson*, ___ F3d ___, 1998 WL 754391 (DC Cir Oct 30, 1998), the circuit, one judge dissenting, held the PLRA cap on attorney's fees applicable so as to limit the award of fees for legal services provided after the effective date of the PLRA. The case, begun in 1971, involved a constitutional challenge to the conditions at the D.C. jail. Injunctive relief was granted in 1975 and the plaintiffs' attorneys have been monitoring the injunction. In 1988, the district court

awarded the plaintiffs attorney's fees and fixed the hourly amount at market rates. Multiple payments were made to the plaintiffs' attorneys under that order. The issue addressed by the circuit was whether the fees for legal services provided after adoption of the PLRA were governed by the cap on hourly rates set by the PLRA. The court held they were, reasoning that "retroactivity concerns are not implicated when the statute is applied to work performed after passage of the PLRA." 1998 WL 754391 p 3. In so holding, the court noted its agreement with the Eighth Circuit's view of these matters (*Williams v Brimeyer*, 122 F3d 1093 [8th Cir 1997]), as well as its disagreement with the Sixth Circuit's view in *Hadix v Johnson*, 143 F3d 246 (6th Cir 1998), *pet for cert pending* (No. 98-262), that the PLRA did not apply to pending cases, and with the Fourth Circuit's view in *Alexander S. v Boyd*, 113 F3d 1373, 1386 (4th Cir 1997), *cert denied*, 118 S Ct 880 (1998), that the PLRA controls fees awarded after passage of the Act regardless of when the legal services were performed.

The decision demonstrates the clear, acknowledged and deepening conflict among the circuits and underscores the need for authoritative resolution by this Court.

Date Completed: November 4, 1998
Albany, New York

Respectfully submitted,

DENNIS C. VACCO
Attorney General of the
State of New York
Attorney for Petitioners
The Capitol
Albany, NY 12224
(518) 474-8352

BARBARA G. BILLET
Solicitor General and
Counsel of Record

PETER H. SCHIFF
Deputy Solicitor General

MARTIN A. HOTVET
Assistant Attorney General

Of Counsel